Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030, RM-8029
and		
Implementation of Section 309(j) of the Communications Act-Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

COMMENTS OF ADVANCED MOBILECOMM, INC.

Advanced MobileComm, Inc. ("AMI"), by its counsel and pursuant to Section 1.415 of the Commission's Rules, hereby submits its Comments on the Further Notice of Proposed Rulemaking, FCC 94-271 (November 4, 1994) ("FNPRM") in the above-captioned proceedings. By its FNPRM, the FCC proposes to implement rules governing the licensing and construction of wide area 800 MHz SMR systems.

AMI has constructed and operated both regional and local 800 MHz and 900 MHz SMR systems in locations throughout the United States over the past decade. AMI's SMR systems have served thousands of users during that time. AMI also has participated extensively in FCC proceedings that have structured the SMR industry, and has been one of the leading proponents of the introduction of new spectrally-efficient technologies to enhance the capacity and capabilities of SMR systems.

At the outset, AMI commends the FCC for proposing rules to promote the competitiveness of wide-area SMR systems with other wide-area communications systems, including both existing cellular and planned PCS systems. AMI shares the view expressed by the Commission in its FNPRM (at para. 2) that the Rules must strike a "fair and equitable balance" between the interests of wide-area SMR systems and smaller, more localized SMR systems. To this end, AMI believes that the rules proposed in the FNPRM with the modifications discussed herein will provide a regulatory framework that will both encourage the timely construction of wide-area SMR systems and protect the legitimate interests of existing local SMR systems, thus attaining the balance sought by the Commission.

I. CHANNEL ASSIGNMENT AND SERVICE AREAS

In the FNPRM, the Commission has proposed to divide 10 MHz of contiguous SMR spectrum into four 2.5 MHz blocks of 50 channels apiece, and to license those blocks by 51 "Major Trading Areas" or "MTAs." [1] The Commission has further proposed to designate the remaining 80 non-contiguous SMR Category channels for "local" licensing.

AMI supports the division of the SMR channels into four 50 channel blocks for wide-area systems and 80 channels for local licenses. This division, in AMI's view, equitably balances the need for wide area systems and for local channels.

---

[1]The 51 MTAs include the 47 MTAs defined by Rand McNally, an Alaska MTA, a Guam-Northern Mariana Islands MTA, an American Samoa MTA and a Puerto Rico-U.S. Virgin Islands MTA.

AMI, in addition, urges the FCC to limit future licensing on the 150 General Category channels to local SMR systems. In so doing, the FCC will ensure that the General Category channels serve the largest number of users possible. Existing business and industrial/land transportation licensees on General Category channels should be grandfathered and allowed to retain and renew their licenses in the ordinary course, but should be limited to transferring or assigning their licenses only for SMR use.

AMI further believes that licensing of the SMR wide-area systems by the 174 Economic Areas ("BEAs") as defined by the Bureau of Economic Analysis of the Department of Commerce will more accurately reflect natural SMR market boundaries than will licensing by MTAs. To this end, BEAs are designed around urban/suburban and rural traffic patterns.

Adoption of MTA licensing, as proposed in the FNPRM, will pose several complications. MTAs typically are quite large in geographic area and population coverage. The size of the MTAs alone, when coupled with reasonable construction requirements, may itself restrict entrance into the wide-area SMR auctions and limit bidding for the licenses.[2]

MTA boundaries also do not conform to natural SMR market divisions in certain respects. The Los Angeles MTA, for example, includes the San Diego area and the Las Vegas area as

---

[2]Licensing by BEAs, moreover, will eliminate any need for the SMR industry to license the use of the MTAs from Rand McNally.

well as the Los Angeles area. Yet, in AMI's substantial experience as an operator of regional SMR systems in both the San Diego and Las Vegas areas, these areas are better viewed as separate markets with distinct features. Population in the San Diego area is less concentrated and has more vehicular mobile traffic than the Las Vegas market, which is more typified by concentrated population with very high usage of portable units.

Similarly, the San Antonio MTA includes both the San Antonio area and the Corpus Christi area (which are separate BEAs), which are also different mobile communications markets. Although it is certainly possible for an SMR operator to operate a wide area system covering the San Antonio MTA, AMI believes that licensing smaller regions than the MTAs, such as the BEAs, will provide more service options and flexibility in these areas. BEA licensing further will allow licensees the option of acquiring in smaller markets (such as Corpus Christi) only the capacity needed in that market, rather than competing for unwanted capacity in a larger market (such as San Antonio) to which it is coupled in an MTA. It is therefore reasonable to participate that licensing by BEAs will enhance the number of bidders at auction.

Moreover, as the FCC noted in the FNPRM (at paras. 27-29), existing SMR allocations vary substantially in the Mexican and Canadian Border Areas. Licensing in the Los Angeles MTA, for example, would couple the San Diego area, which is in the Mexican border area, with the Los Angeles area, which is not. Since

there are only a total of 95 SMR channel pairs available in the Mexican border area, licensing by four blocks theoretically would provide each license with only 23 or 24 channels in the border area defined by Section 90.619 of the Rules. Given the existing and expected demand in the San Diego market, AMI believes that licensing of two wide area blocks of 45 channels apiece (associated with two of the 50 non-border area Blocks) would better serve the unique needs of that market.[3]

AMI believes further that the licensing of "local" SMR systems on the lower 80 SMR channels and the 150 General Category channels should continue to be site specific, and not based on MTA, BEA or BTA boundaries. This will enable local SMR operators to define their own markets and to not be encumbered by larger construction requirements than the markets they desire to serve. Site specific licensing, in turn, should continue to permit the construction of "niche" systems designed to meet unique and customized needs. Local SMR licensees should continue to receive channel assignments in up to 5 channel blocks and should be protected from co-channel use on the basis of the existing Rules

[3]AMI generally supports the FCC's proposal to prospectively restrict SMR operators from using business or industrial/land transportation channels through intercategory sharing. However, because of the severe shortage of SMR spectrum in the Mexican border area, AMI urges the FCC to continue to permit SMR licensees in this area to obtain capacity to expand their systems through intercategory sharing of pool channels, and, indeed, to limit non-SMR use of those channels by pool eligibles to that which is currently licensed or that which is necessary after a showing that all available 900 MHz or 220 MHz channel capacity allocated to those eligibles has been exhausted.

(i.e., 70 mile separation or 40/22 dBu protection).[4]

II. LICENSEE RIGHTS AND OBLIGATIONS

In its FNPRM (at paras. 30-50), the FCC proposed a set of rights and obligations that would accompany a wide-area SMR license purchased through competitive bidding. In AMI's view, central to the premise of purchasing a wide-area SMR license through competitive bidding for one or more of the block assignments in a given market is the concept that the auction winner has purchased all remaining or residual rights to the use of its channels in its markets not already licensed. Given the years of licensing in 800 MHz SMR that has preceded this proceeding, the channels that will be the subject of the wide-area SMR auctions, of course, are heavily utilized throughout every urban area, most suburban areas and many rural areas. Accordingly, subject to any existing license rights the auction winner may hold on its block channels, the licenses purchased through auction will be heavily encumbered.

Because the FCC has identified a policy goal on the 200 SMR wide-area channels of encouraging the use of those channels for wide-area wireless services competitive with cellular and PCS, its Rules must provide the prevailing auction winners sufficient assurance that they will not be further encumbered by additional licensees on their channels or additional rights held

---

[4]AMI encourages the FCC to retain its "first come, first served" licensing policies for local SMR licenses, with mutual exclusivity (to be resolved by auction) occurring only if mutually exclusive applications are received by the Commission on the same day.

by existing licensees. Moreover, the FCC's Rules should promote and encourage the migration of incumbent licensees in a timely and fair manner. At the same time, however, the FCC's Rules must ensure that existing licensees continue to receive protection from harmful interference.

For this reason, AMI believes that the Commission appropriately has indicated (FNPRM at para. 12) that the auction winner (or its subsequent assignee or transferee) will be the beneficiary of any channel recovery actions on its block channels in its market. AMI understands this to include any channels recovered by the Commission as a result of its enforcement actions and any channels recovered as a result of any finder's preference actions initiated by any party pursuant to Section 90.173(k) of the Rules.

Applications seeking license assignment from (or the transfer of control of) an incumbent licensee to the auction winner in the incumbent's market should be presumptively considered to be in the public interest. Incumbent licensees should be free to assign their licenses to third parties subject to the requirements of the FCC's Rules, provided that third party assignees take the licenses subject to the relocation rights of the auction winner.

AMI believes that the Commission's Rules should encourage voluntary agreements between incumbent licensees and auction winners. However, the Rules ultimately should require the migration of incumbent licensees after a reasonable period of

time if the auction winner bears the costs of migration and provides comparable facilities to those from which the incumbent licensee is relocated. The FCC has recognized both in the PCS Dockets (Gen Docket 90-314 and ET Docket 92-9) and in the instant proceeding that clean spectrum unencumbered within the license area by co-channel use enables a licensee to configure its system to optimize its service to the public. By ensuring, subject to reasonable migration criteria, that the wide-area SMR licensees ultimately may operate on clean spectrum, the FCC will facilitate the levelling of the playing field between those licensees and cellular and broadband PCS licensees (who also will have clean spectrum).

In this respect, AMI suggests that incumbent licensees and auction winners should be provided a one year period to negotiate a voluntary relocation agreement commencing upon the auction winner's request for negotiation. In the event the negotiations prove unsuccessful, the auction winner could request that the FCC require relocation upon a showing that: (1) the auction winner can provide comparable facilities to the incumbent licensee and (2) the auction winner will bear all costs of relocation, including new equipment for subscribers, if necessary, new station equipment and all labor costs.[5] The FCC

[5]For purposes of determining the comparability of facilities, the auction winner must provide the incumbent licensee numerically and functionally equivalent channels (e.g., the same number of channels, in the trunking format of the incumbent licensee's choice, at the same or a superior transmitter site and no more short-spaced than the existing channels) in the 800 MHz band.

should adopt expedited procedures to ensure a timely decision within 90 days upon a request for relocation following the expiration of the one year voluntary negotiation period.

Prior to any relocation of the facilities of incumbent licensees, however, the FCC's Rules must provide sufficient interference protection to those licensees. To this end, although AMI supports the self-coordination by the wide-area licensee of any clean channels within its market area, it believes that coordination by a certified coordinator of any channels shared by the auction winner and an incumbent licensee will continue to be advisable.[6] Similarly, the auction winners should be required to meet the existing emission mask with respect to any channels shared with incumbent licensees.

III. AUCTION RULES AND PROCEDURES

In its FNPRM (at paras. 55-106), the Commission proposed application procedures and auction rules to govern the processing of wide-area SMR applications and the conduct of the auctions. AMI concurs with the Commission's conclusion that simultaneous, multiple round auctions is the preferred auction

---

[6]For the same reasons, AMI suggests that the proposed wide-area construction requirements should be modified to provide the wide-area licensee some relief due to the sharing of its channels with incumbent licensees. In particular, AMI urges that wide-area licensees be allowed to apply for a reduced coverage requirement upon a showing that the sharing of channels with incumbent licensees effectively precludes compliance with the established construction milestones. This showing could encompass (among other things), for example, a showing that the licensee has constructed such clean channels that are available to it to cover the required population, or that the shared channels have been constructed to the extent that they are commercially viable.

method. This will facilitate the regionalization of licenses across markets or even nationwide. The FCC may wish to conduct multiple auctions by geographic region (i.e., one auction for the Blocks in the Northeastern markets, one for the Southeastern markets, etc.) to ease any resource burden that may be imposed upon potential smaller auction participants by a likely single auction of all licenses nationwide.

Because of the uncertainty of the value of the wide-area licenses at auction, AMI does not believe that bidding credits should be awarded to Designated Entities, or "DEs." Nor does AMI support the set-aside of a Block for an entrepreneurial license. However, to promote the ability of smaller operators (30 channels licensed or managed and/or less than $540,000 in current system revenues) to participate in the auctions, installment payments may prove useful.

IV. CONCLUSION

For these reasons, AMI supports adoption of the FNPRM with modifications consistent with those described herein.

Respectfully submitted,
ADVANCED MOBILECOMM, INC.

By: _____
Robert B. Kelly

KELLY & POVICH, P.C.
Suite 300
1101 30th St., N.W.
Washington, D.C. 20007
(202) 342-0460

ITS COUNSEL

January 5, 1995